

HON. THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JONATHAN WENDER,

Plaintiff,

v.

SNOHOMISH COUNTY, et al.,

Defendants.

NO. CV07-0197Z

STIPULATION PROTECTING  
CONFIDENTIALITY OF DOCUMENTS  
AND INFORMATION AND [PROPOSED]  
ORDER THEREON

Pursuant to Fed.R.Civ.Pro. 26(c), the parties, by and through their respective counsel of record, hereby stipulate that the following provisions shall apply to all discovery in this litigation.

1. The Complaint of Plaintiff involves Plaintiff's claims of retaliation for engaging in free speech activities protected by the first amendment to the United States Constitution and violation of his rights to due process of law in connection with Plaintiff's employment at Mountlake Terrace Police Department and with his subjection to the so-called Brady policy at Snohomish County. Defendants deny these claims.

2. It is necessary for Plaintiff to provide through discovery in this lawsuit confidential financial information and confidential medical records, all of which are entitled to protection against improper disclosure to the general public. It is also necessary for defendants to produce confidential personnel files and disciplinary records of comparators, managers, supervisors and other employees of defendants, some of whom are not parties to this action,

1 which, if disclosed to the public, may affect the privacy interests of those employees, and/or may  
2 cause embarrassment. Further, it will be necessary for defendants to produce confidential non-  
3 conviction data under RCW 10.97, and "Brady" or "potential impeachment disclosure" files and related  
4 records regarding specific officers.

5 3. This Stipulation, when and as approved by the court, is intended to govern all  
6 productions of confidential information and documents pertaining to this litigation.

7 4. The following definitions shall apply to this Stipulation and Order:

8 4.1 "Party" or "parties" shall mean and refer to any party, Plaintiff or Defendants,  
9 in the above-captioned matter signatory to this Stipulation including counsel of record for  
10 any party signatory to this Stipulation;

11 4.2 "Confidential Information" shall mean and refer to the Plaintiff's medical and  
12 psychological records and information, and personal financial information and records, including  
13 bank account numbers and social security numbers. It shall also refer to confidential personnel  
14 or disciplinary records and information, of the individual defendants and other employees of the  
15 agency defendants. It also refers to "Brady" or "potential impeachment disclosure" records and  
16 information regarding specific officers. It also refers to information a party in good faith  
17 designates as "Confidential" as set forth below. Upon good cause shown and/or a compelling  
18 reason, the Court may determine that certain information the parties designate as "Confidential"  
19 shall be redacted or filed under seal, as set forth below.

20 4.3 "Qualified persons" shall mean and refer to:

21 (a) The Court and Court personnel, including stenographic reporters  
22 engaged in such proceedings as are necessarily incident to the preparation for trial and/or trial of  
23 this action;

24 (b) Counsel of record for any party signatory to this Stipulation,  
25 including all partners and associate attorneys of that counsel's law firm;  
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(c) Employees, paralegal assistants, stenographic and clerical employees of counsel for the parties signatory to this Stipulation only when operating under the direct supervision of counsel;

(d) Plaintiff Jonathan Wender;

(e) Defendants, and all managing agents and employees of the agency Defendants, who become involved in this litigation at the request of counsel of record and whose review of protected documents is specifically controlled by counsel;

(f) Potential witnesses who become involved in this litigation at the request of counsel of record and whose review of protected documents is specifically controlled by counsel;

(g) Experts or consultants employed by counsel of record for the purpose of assisting in these proceedings, preparation for trial and/or trial of this action;

(h) Claims examiners of the Defendant's insurance company or pool.

5. Any party to this action may proffer into evidence any Confidential Information at time of trial or by motion or otherwise and such Confidential Information may be introduced or shown to jurors and witnesses at the time of trial or on motion of any party, subject to normal evidentiary objections. In the event that any material designated as Confidential is used in any court proceeding in this action, it shall not lose its confidential status through such use, and the party using such confidential material shall maintain its confidentiality during such use, subject to the Court's guidance.

6. All documents, information and things deemed to contain Confidential Information under Paragraph 4.2 above shall be brought within the protection of this Stipulation and Order by placing in a conspicuous place on any such documents, or on the first page or cover sheet of a set of documents, the word "Confidential." Any such Confidential Information and documents shall be kept confidential and shall not be disclosed, used or copied except as set forth hereafter and in connection with preparation for the proceedings in the above-captioned

1 matter and shall not be used for any other purpose. The term“documents”shall be defined to  
2 include all written, photographic, or electronic media, including computer print-outs and  
3 computer storage devices such as floppy disks, extracts, summaries, attachments, and answers to  
4 requests for production.

5 7. Any deposition testimony deemed to contain Confidential Information shall be  
6 brought within the protection of this Stipulation and Order by orally designating on the  
7 deposition record the protected portion or portions or, within ten (10) business days of receipt of  
8 the transcript, by designating such portions by page and line number.

9 8. The designating party shall have the burden of proof regarding the confidential  
10 nature of designated documents and/or information.

11 9. The parties shall resolve any disputes concerning the designation of any  
12 documents as“Confidential”as follows: the non-designating party shall challenge any designation  
13 of confidentiality by notifying the designating party in writing, specifically identifying the  
14 challenged item(s) as well as the basis for the challenge. If the parties cannot resolve the  
15 challenge after engaging in good-faith discussions, the designating party shall seek an order of  
16 the Court with respect to the challenged information, documents, or things designated as  
17 ‘Confidential.’ Both Plaintiff and Defendants will treat all materials or information designated as  
18 ‘Confidential’ in accordance with the requirements of this Order for a reasonable period after  
19 notice of a challenge to confidentiality and during the pendency of related motions. The parties  
20 further agree that before seeking any relief from the Court under this paragraph, they will make a  
21 good faith effort to resolve any disputes concerning the confidential treatment of any  
22 information.

23 10. **Except as provided for herein, confidential documents and confidential**  
24 **information contained therein, shall not be communicated or disclosed in any manner,**  
25 **either directly or indirectly, to any person or entity.**  
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1 11. Disclosure of confidential information and confidential documents may be made  
2 only to "qualified persons," as defined above, with the following additional limitations:

3 11.1 Expert witnesses and consultants retained by Plaintiff or Defendants must  
4 affirmatively agree to the terms and conditions of this Protective Order prior to review of any  
5 such documents, and execute a Statement of Confidentiality, identical to Exhibit A. Counsel  
6 shall retain such statements and make them available to other counsel signatory to this  
7 Stipulation upon request, if a violation of the Order is reasonably believe to have occurred.

8 11.2 Agency Defendants and other representatives of Defendants may review  
9 confidential documents provided by the Plaintiff only as needed for the defense of Plaintiffs  
10 claims after executing a Statement of Confidentiality, identical to Exhibit A. Counsel for the  
11 Defendants shall retain such statements and make them available to other counsel signatory to  
12 this Stipulation upon request, if a violation of the Order is reasonably believe to have occurred.

13 11.3 Potential witnesses may review confidential documents only as needed  
14 for litigation of this case and under the supervision of counsel after executing a Statement of  
15 Confidentiality, identical to Exhibit A. Counsel shall retain such statements and make them  
16 available to other counsel signatory to this Stipulation upon request, if a violation of the Order  
17 is reasonably believed to have occurred.

18 12. When documents, briefs or memoranda containing Confidential Information  
19 are filed with the Court, the same shall be done in accordance with Local Rule CR 5(g)(1) and  
20 the U.S. District Court's CM/ECF procedures for the filing of sealed documents. For confidential  
21 documents filed by hard copy, and which the Court has determined should be sealed for "good  
22 cause" shown (non-dispositive motions) or a "compelling reason" (dispositive motions), such  
23 documents shall be placed in sealed envelopes or other appropriately sealed containers on which  
24 shall be endorsed:

25 12.1 The words "SEALED CONFIDENTIAL";

26 12.2 The title of the action to which the contents pertain;

12.3 An indication of the nature of the contents; and

12.4 A statement substantially in the following form:

“This envelope [or container] is filed pursuant to court order and protective order by [name of party] and contains confidential information. It is not to be opened or the contents thereof to be displayed or revealed except to the Court and to counsel of record signatory to the Stipulated Protective Order. The contents shall not be displayed or revealed to third parties except by Court order or by written agreement of all the parties.”

The envelope or container shall not be opened, except as set forth above. The envelope shall then be returned to the Clerk of the Court, appropriately sealed, and endorsed as provided above.

13. In all court filings and use of exhibits, all parties shall comply with ‘the Privacy Concerns’ set forth in the U.S. District Court’s CM/ECF Civil and Criminal Procedures and redact documents as necessary. In summary:

- Minors’ names: Use only the minors’ initials.
- Financial account numbers: Identify the name or type of account and the financial institution where maintained, but use only the last four digits of the account number.
- Social Security numbers: Use only the last four digits.
- Dates of birth: Use only the year.

14. Miscellaneous.

14.1 The information protected by this Protective Order is the substance of the Confidential Information, no matter what form the information is in and no matter how the information might be communicated. The parties do not intend to in any way waive the assertion of confidentiality and hereby expressly reserve their rights to assert and preserve the confidentiality of any information disclosed in this Proceeding that is not designated as Confidential Information pursuant to this Protective Order.

14.2 Recipients of Confidential Information pursuant to this Protective Order shall exercise reasonable and appropriate care with regard to such Confidential Information to ensure that the confidential nature of the same is maintained.

1           14.3 In the event any person in receipt of Confidential Information shall receive  
2 a subpoena, or court order, seeking disclosure of another party's Confidential Information, such  
3 person shall immediately upon receipt of such subpoena or court order notify counsel for the  
4 designating party that produced the Confidential Information of same and shall provide a copy  
5 of same if applicable. Except in the case of an order requiring immediate production of the  
6 requested information, no party shall disclose another party's Confidential Information without  
7 giving the other party an opportunity to seek from this Court an order governing disclosure of the  
8 requested information. Nothing herein shall be construed to require any recipient of information  
9 subject to this Order to refuse to comply with a lawfully issued subpoena, with any order of any  
10 Court, or with the command of any law enforcement agency.

11           14.4 If Confidential Information is disclosed to any person other than in the  
12 manner authorized by this Protective Order, the person responsible for the disclosure shall  
13 immediately bring all the pertinent facts relating to such disclosure to the attention of counsel for  
14 all parties, without prejudice to the rights and remedies of any party, and shall make every effort  
15 to prevent further disclosure by it or by the person who received such Confidential Information.

16           14.5 This Protective Order is made to facilitate discovery and the production of  
17 discoverable evidence in this action. Neither the entry of this Protective Order, the designation  
18 of any information as Confidential Information under the Order, the failure to make such  
19 designation, or the failure to object to such designation by any party shall constitute evidence  
20 with respect to any issue in this litigation. This Protective Order shall not abrogate or diminish  
21 any contractual, statutory or other legal right or obligation any party may have with respect to  
22 information disclosed in this matter.

23           14.6 Any party or person who knowingly violates this Protective Order may  
24 be held in contempt of this Court. The Court and parties preserve the right to order or seek an  
25 award of such other relief as is appropriate for such disclosure.  
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1           15.     No later than sixty (60) days following the conclusion of these proceedings,  
2 Plaintiff and Defendants agree to destroy or return all Confidential Information, documents, and  
3 things and all copies of same to the counsel producing such information and documents, at the  
4 election of, and expense of, the possessing party. To the extent that the information is embodied  
5 in and is inseparable from attorney work product, the recipient party may destroy the document  
6 or maintain confidentiality of such material in perpetuity. "Conclusion of these proceedings" refers  
7 to the exhaustion of available appeals, or the running of time for taking such appeals, or by  
8 settlement and dismissal with prejudice of all claims, as provided by applicable law. In the event  
9 that settlement is reached with fewer than all parties, the settling defendant(s) will destroy or  
10 return all Confidential Information, documents and things of all other parties within sixty (60)  
11 days of that settlement agreement. All other parties shall destroy or return all Confidential  
12 Information, documents and things within sixty (60) days of the conclusion of the entire  
13 proceedings.

14           16.     The provisions of this Order shall not affect the admissibility of evidence at trial,  
15 summary judgment, or any preliminary evidentiary proceedings in open court.

16           17.     The provisions of this Protective Order may be modified by the Court on its own  
17 motion after notice to the parties and an opportunity to be heard.

18           18.     At this time, the Court specifically finds good cause and compelling reason to  
19 require the following information and documents protected from public disclosure, as follows:

20                   (a)     The Plaintiff's medical or psychological information and medical or  
21 psychological records shall be filed under seal.

22                   (b)     All of Plaintiff's financial records shall be filed under seal.

23                   (c)     Confidential documents from employees' personnel or disciplinary  
24 files shall be filed under seal.



(d) Confidential documents constituting non-conviction data under RCW 10.97, and documents from 'Brady' or 'potential impeachment disclosure' files and related documents that mention specific officers shall be filed under seal.

JOINTLY SUBMITTED this 23<sup>rd</sup> day of October, 2007.

MacDONALD HOAGUE & BAYLESS

CHRISTIE LAW GROUP, PLLC

By /s/ Joseph R. Shaeffer  
Andrea Brenneke, WSBA #22027  
Timothy K. Ford, WSBA #5986  
Joseph R. Shaeffer, WSBA #33273  
Attorneys for Plaintiff

By: /s/ Thomas Miller (via e-mail approval)  
Robert L. Christie, WSBA #10895  
Thomas Miller, WSBA # 34473  
Attorneys for Defendants City of  
Lynnwood and Steven Rider

SNOHOMISH COUNTY PROSECUTING  
ATTORNEY-CIVIL DIVISION

STAFFORD FREY COOPER

By /s/ Charlotte Comer (via e-mail approval)  
Michael Held, WSBA #19696  
Charlotte F. Comer, WSBA #36805  
Attorneys for Snohomish County,  
Janice Ellis, and Mark Roe

By: /s/ Michael C. Bolasina (via e-mail approval)  
Michael C. Bolasina, WSBA #19324  
Attorneys for Mountlake Terrace,  
Mountlake Terrace Police Dept. and  
Scott Smith

**ORDER**

IT IS SO ORDERED this 24th day of October, 2007.

s/ Thomas S. Zilly  
HON. THOMAS S. ZILLY  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

**STATEMENT OF CONFIDENTIALITY**

The undersigned acknowledges receipt of the attached STIPULATION PROTECTING CONFIDENTIALITY OF DOCUMENTS AND INFORMATION AND ORDER THEREON and that he/she has read and understands and agrees to be bound thereby.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2007, I electronically filed the foregoing to the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Michael Charles Bolasina**  
mbolasina@staffordfrey.com, nskretta@staffordfrey.com
- **Robert Leslie Christie**  
bob@christielawgroup.com, jason@christielawgroup.com, tom@christielawgroup.com, robertchristie@mac.com, maureen@christielawgroup.com
- **Charlotte F Comer**  
ccomer@co.snohomish.wa.us, gbennett@co.snohomish.wa.us
- **Michael C Held**  
mhheld@co.snohomish.wa.us, pfowler@co.snohomish.wa.us
- **Gregory G. Schrag**  
schragaty@aol.com

By /s/ Joseph R. Shaeffer  
Andrea Brenneke, WSBA #22027  
andreab@mhb.com  
Timothy K. Ford, WSBA #5986  
timf@mhb.com  
Joseph R. Shaeffer, WSBA #33273  
josephs@mhb.com 705 Second Avenue,  
Suite 1500  
Seattle, WA 98104-1745  
Phone: 206-622-1604  
Fax: 206-343-3961  
Attorneys for Plaintiff